

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ICESTONE, LLC,

Plaintiff,

-against-

MATEC, S.R.L., EUROSTONE MACHINE,
and PYRAMID SUPPLY, INC.,

Defendants.

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AMON, Chief United States District Judge.

NOT FOR PUBLICATION

ORDER

09-cv-1292 (CBA) (VVP)

Before this Court is a Report and Recommendation from Magistrate Judge Viktor Pohorelsky on Plaintiff Icestone, LLC's Motion for Entry of Final Judgment by Default, which this Court referred to Judge Pohorelsky on November 9, 2010. On July 12, 2011, counsel for ICESTONE wrote Judge Pohorelsky inquiring as to the status of the Motion and as to whether Judge Pohorelsky needed additional materials. DE #24. In response, Judge Pohorelsky informed Icestone that the Motion was under active review and requested (1) legal authority supporting Icestone's entitlement to each item of damages alleged; and (2) the terms of the settlement reached between Icestone and the other defendants in the action. DE #25.

Icestone has not responded to this request. Consequently, although Judge Pohorelsky's R&R found that Icestone had established liability against MATEC for breach of contract, he found that Icestone had not sufficiently established damages. He therefore recommended that this Court deny the Motion for Entry of Judgment by Default without prejudice to a renewed motion that includes the requested information. Icestone has not filed objections to the R&R.

The Court has reviewed the record and agrees that entry of a default judgment would be inappropriate absent the additional submissions requested by Judge Pohorelsky. This is particularly true in light of the fact that Icestone has not submitted a memorandum in support of its motion, as required by our Local Civil Rule 7.1(a)(2). Having reviewed the remainder of the R&R and finding no clear error, the Court hereby adopts it in its entirety. *See Wilds v. United Parcel Services, Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). As noted above, this is without prejudice to a renewed motion for entry of default judgment that includes the materials requested by Judge Pohorelsky. In the event Plaintiffs make such a motion, it is hereby referred to Judge Pohorelsky for Report and Recommendation.

SO ORDERED.

Dated: Brooklyn, N.Y.
September 26, 2011

/s/
Carol Bagley Amon
Chief United States District Judge